IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.3 OF 2005
IN
SUMMARY SUIT NO.3491 OF 2004

Kalpesh H.Vora ..Plaintiff

Vs.

Indokem Limited ..Defendants

Mr.Birendra Saraf a/w Neeta Solanki i/b Kiran Jain and Co. for the plaintiffs

Mr.S.G.Gokhale for the defendants

CORAM : S.U.KAMDAR, J
DATED : 17TH OCTOBER, 2005

P.C.:

1. The present suit is filed for the recovery of Rs.7,15,497/- in respect of various invoices and delivery challans which are annexed to the plaint. The defence of the defendants is threefold.

2. Firstly, it has been contended that the suit is not maintainable as summary suit. He contends that invoice and delivery challans does not constitute a written contract and therefore it is not maintainable as summary suit. This court

has taken a consistent view that invoice and delivery challans constitute a written contract and therefore suit is maintainable as summary suit.

3. The next defence is that he has already made payment in respect of aforesaid invoices. Plaintiff has produced in reply of the aforesaid defence all the adjustment which has been made in respect of payments received from the defendants. Plaintiffs have adjusted the payment against earlier outstanding invoices and thus no payment is received against each of the said invoice which are subject matter of the suit. It is the case of the defendant that no payment has been shown. However, his contention is that plaintiffs ought not to have adjusted the said payment against earlier outstanding invoices. It is also an admitted position by the defendants that while tendering payments they have not directed payment in respect of particular debt and in that view of the matter plaintiffs were entitled to adjust the said claim against oldest debt. In that view of the matter, also defence raised of payment has no substance and accordingly, I reject the same.

4. The third and last contention raised is that in respect of two of the invoices there are no delivery challans but Lorry Receipt. I am of the opinion that Lorry Receipt is sufficient to prove the contract. Thus, there is no defence. However, with a view to give an opportunity to the defendants to defend the suit, I direct the defendants to deposit a sum of Rs. 7.0 lacs within 4 weeks failing which plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit of the said amount. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.